

Application No.: 10/727,026

Case No.: 59417US002

**Amendments to the Drawings:**

Please amend FIGS. 19-21 as follows:

in FIG. 19, please delete original reference numbers 818, 820, and 824, and their associated lead lines;

in FIG. 20, please delete original reference numbers 912, 920, and 924, and their associated lead lines; and

in FIG. 21, please delete original reference numbers 1020 and 1024, and their associated lead lines.

In accordance with Rule 121, two replacement sheets of drawings (sheet 5 of 9 and sheet 6 of 9, each labeled "Replacement Sheet") are submitted herewith that incorporate these drawing changes.

Application No.: 10/727,026

Case No.: 59417US002

REMARKS

Claims 1 to 39 remain pending. Claims 13, 20, and 26 are being amended. Claims 34-39 are currently withdrawn from consideration, pending a request for rejoinder on the grounds set forth in the Official Gazette at 1184 OG 86 (Mar. 26, 1996), "Guidance on Treatment of Product and Process Claims in light of *In re Ochiai*, *In re Brouwer*, and 35 USC §103(b)."

As explained elsewhere in this paper, a terminal disclaimer and two replacement drawing sheets accompany this amendment.

Reconsideration and continued examination of the present application is respectfully requested.

Drawing Objections

The Office Action objected to the drawings, in particular to FIGS. 9, 14, 16, 17, 19, 20, and 21, as failing to comply with Rule 84(p)(5) for including reference characters not mentioned in the description.

Applicants thank the Examiner for his careful review of the application. In response to the objections, we include herewith a combination of amendments to the specification (to insert some reference numbers) and amendments to the drawings (to delete other reference numbers).

The following reference numbers appearing in the drawings have been added to the specification by amendment:

<u>Ref. No.</u>	<u>FIG.</u>	<u>Item</u>	<u>Support can be found</u>
84	9	SP reflector	p. 12 line 21 and FIG. 9
310	14	PLED construction	p. 6 lines 23-24 and FIG. 14
512	16	LED	p. 27 line 20 and FIG. 16
612	17	LED	p. 28 line 11 and FIG. 17
810	19	PLED construction	p. 6 line 25 and FIG. 19
910	20	PLED construction	p. 6 line 25 and FIG. 20
1010	21	PLED construction	p. 6 line 25 and FIG. 21

Minor corrections to some of these paragraphs are also being made. No new matter has been added.

Application No.: 10/727,026

Case No.: 59417US002

The remaining objected-to reference numbers, i.e., 818, 820, 824 (FIG. 19), 912, 920, 924 (FIG. 20), and 1020 and 1024 (FIG. 21) have been deleted from the drawings. No new matter has been added.

The combination of specification amendments and drawing amendments are submitted to be fully responsive to the Examiner's objection. Withdrawal thereof is respectfully requested.

#### **Claim Objections**

The Office Action objected to claim 20 for the informality of lacking antecedent basis for the term "the second multilayer reflector".

In response, claim 20 has been amended to depend from claim 18. The amendment is submitted to be fully responsive to the Examiner's objection.

#### **Voluntary Claim Amendments**

Applicants are also voluntarily amending claims 13 and 26, the original versions of which made reference to certain multilayer reflectors, polymeric material, and inorganic materials. The amendments remove the reference to polymeric material and clarify that the multilayer reflector itself is substantially free of inorganic materials. Support can be found, for example, at page 9 lines 13-14 and page 25 lines 2-3 of the specification. No new matter has been added.

#### **Provisional Obviousness-Type Double Patenting Rejections**

Claims 1-4, 7, and 12-13 were provisionally rejected over various claims of copending U.S. Patent Application Serial No. 10/727,072 (Attorney Docket No. 59416US002), under the judicially-created doctrine of obviousness-type double patenting ("ODP").

Claims 5-6, 14-17, and 33 were provisionally rejected over claim 1 of the '072 Application in view of U.S. Patent 6,686,676 (McNulty et al.), also under the doctrine of ODP.

In response, Applicants submit herewith a terminal disclaimer over the '072 Application. This terminal disclaimer is believed to obviate the rejection, which should be withdrawn. However, Applicants also wish to point out certain statements or allegations, made in the Office Action in connection with the ODP rejections, which Applicants disagree with:

Application No.: 10/727,026

Case No.: 59417US002

- that claim 4 (reciting "the excitation light comprises UV light") is not a structural limitation. Applicants respectfully submit the limitation is structural, since it restricts the "LED" (a structural element) introduced in claim 1.
- that claim 12 (reciting "the polymeric material resists degradation when exposed to UV light") claims what a device does, not what a device is. Applicants respectfully submit the limitation is proper. Functional limitations are not inherently improper. Reference is made to MPEP § 2173.05(g) and to the specification at p. 8 line 26 to p. 9 line 14.
- that FIG. 5 of McNulty shows a discontinuous layer of phosphor material (e.g. in the form of a plurality of dots of phosphor material). In response, Applicants disagree that FIG. 5 of McNulty teaches any "discontinuous layer of phosphor material", as that term is used in the present claims and specification. The present specification does not teach that a layer becomes discontinuous simply because phosphor particles are dispersed in a binder material. On the contrary, for example, Applicants describe layer 22 of FIG. 2 (composed of one or more phosphor materials mixed with a binder) as a "substantially uniform phosphor layer". See e.g. FIGS. 2-3, and the present specification at page 3 lines 1-23 and page 9 line 15 to page 10 line 4. Compare the discussion of discontinuous phosphor layers on page 19 lines 9-28 of the present specification. Clearly, McNulty does not disclose any discontinuous layer of phosphor material.

#### Withdrawn Claims

The Office Action acknowledges Applicants' election with traversal of the earlier restriction requirement, but advises Applicants to amend the non-elected claims to require the limitations of the elected invention.

In response, Applicants respectfully submit that no amendments of non-elected claims 34-39 are needed. The notice in the Official Gazette at 1184 OG 86 (Mar. 26, 1996), "Guidance on Treatment of Product and Process Claims in light of *In re Ochiai*, *In re Brouwer*, and 35 USC §103(b)" states in pertinent part:

"However, in the case of an elected product claim, rejoinder will be permitted when a product claim is found allowable and the

Application No.: 10/727,026

Case No.: 59417US002

withdrawn process claim depends from or otherwise includes all the limitations of an allowed product claim.”

In the present case, product claim 1 is believed to be allowable. Although non-elected method claim 34 does not depend from claim 1, comparison of these claims shows that claim 34 includes substantially all of the limitations of claim 1. Dependent method claims 35-39 likewise include these limitations. Hence, no further amendment is believed to be necessary in order for the rejoinder policy set forth in the Official Gazette to take effect.

Allowable Subject Matter

Applicants thank the Examiner for his indication that claims 8-11 and 18-32 would be allowable if rewritten in independent form. Applicants respectfully decline to do so, since the remaining claims are also submitted to be allowable for the reasons given.

Application No.: 10/727,026

Case No.: 59417US002

CONCLUSION

In view of the above, the application is submitted to be in condition for allowance, the early indication of which is earnestly solicited.

Respectfully submitted,

8 May 2006  
Date

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DO NOT WRITE IN THESE SPACES